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APPENDIX
TO AN
ENQUIRY
INTO THE
PRINCIPLES
OF
TOLERATION, &c.

By JOSEPH FOWNES.



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APPENDIX

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P R E F A C E

To the SECOND EDITION.

AN account having been already given, in the preface to the first edition of this pamphlet, of the rise and progress of it, nothing farther is necessary to be added here concerning it. The differences between the conclusion of this and the foregoing edition will be easily accounted for by any one, who considers that at the time of this second publication, the petition of the dissenters was again laid before the parliament. This additional preface, and the appendix, will sufficiently explain themselves; and all, which remains farther to be said, concerning them, and the essay, to which they relate, is to recommend the reasonings contained in them to the candid attention of such as may peruse them.

What apology may be needful for the whole, or any part, of the ensuing enquiry, the readers of it will determine by their own judgment. That, which the author himself apprehended, at the writing of it, might be

thought most liable to exception, was his employing so many pages in attempting to establish the general principles of Toleration, which had been so largely discussed by writers of the most distinguished reputation. But according to his views of the affair, which gave occasion for his book, such a consideration of them seemed unavoidable. The more he reflected on the disappointment of the dissenters, the more he was convinced, that it could be reasonably founded only on one of the following suppositions:—that Toleration is not a matter of right, but of favour;—that, allowing it to be a matter of right, the penal laws against dissenters are no infringement of that right; *i. e.* are not persecuting laws;—that if they are persecuting laws, the act of Toleration is an exemption from them, adequate to the relief of all, who need to be exempted from them;—or, lastly, that there was something in the nature of the request made by the dissenters, which rendered the farther exemption, which they solicited from these laws, unreasonable. That the act of Toleration affords but a very imperfect protection from the severity of these statutes, is a plain matter of fact, which admits of no dispute. But how far the laws, of which it is a mitigation, are in themselves unjustifiable; or whether there was any thing peculiar in that security

security from them, for which the dissenters became suitors, which rendered their case unworthy of regard, must be determined by an appeal to the original principles of Toleration. For this reason it was thought indispensably requisite to state them, and collect all the subsequent parts of this question into one point of view with this leading, capital part of all; that, by the light which it must of necessity cast upon the others, the equity of the relief requested by the dissenters might be clearly determined. And, if it has appeared, upon a careful survey, that Toleration is the right of all good subjects, and members of society;—if it is found, that the penal laws against dissenters are utterly subversive of this right, and, consequently, unjust;—and, if it has been made evident, that the principles and deportment of the dissenters, and the assurances, which they are ready to give to the state for their loyal and unexceptionable demeanor, are such as ought, in reason, to obviate all suspicion of the contrary: if these things have been satisfactorily shewn, the inference makes itself, and is too plain and certain, not to be seen and acknowledged by every intelligent person;—that the request of the dissenters was reasonable, and that the part they acted in presenting it was worthy to be approved.

When applications, for relief from burthens, are founded upon principles of justice, it is generally allowed that apprehensions of some accidental, or merely possible inconveniencies, with which granting the desired relief might be attended, are not of strength sufficient to justify the refusal of it. And yet to this class the objections, which have been urged against the arguments by which the dissenters have defended their cause, must, in general, be reduced. — Alarming hints have been given of the dangers, which might have followed, if their desire had been granted. — Great respect has been expressed for the present dissenters; but great doubt concerning their conduct, and an unwillingness to answer for their behaviour, were they to carry their point, have been joined with these professions of respect. — Vague and obscure presages of evils, which, in this case, might some time arise, have been entertained and suffered to work upon the imagination; and suppositions of events have been made, so chimerical and destitute of foundation, that it is surprizing that gentlemen of understanding, should ever be impressed by them. But the groundlessness of these suppositions will be considered hereafter. — What is now to be observed is, that all these reasonings proceed upon an entire inattention to the nature of the case, which they are designed to affect. In
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matters of mere favour, or expedience, such considerations as these may be allowed to have their weight; though, even in things of this kind, it is owned, that present and probable advantages ought to turn the scale against distant, and merely possible, disadvantages. But, in matters of right, such objections as these are seldom admitted. Were they suffered indeed to prevail, there is no liberty so important and reasonable, but it might be denied; no right so sacred and inviolable, but it might be taken away. For what right, what liberty is there which may not be abused? Or what advantage is there, from which some possible inconvenience may not result? The dissenters apprehend the relief, which they asked, was no more than the principles of reason, christianity, and protestantism, warranted them to request; yet such objections as those, which have been mentioned, seem to be with many considerable enough to overbalance all, which the petitioners could produce in support of their request; and to justify the retaining of laws, which even they who contend for their continuance, have not undertaken to vindicate; except it be by alledging, that they are laws not to be executed, but to stand in *TERROR* only; an excuse, which is at once utterly insufficient to defend the keeping up of such laws; and, (as the argument has been conducted

ducted by those who have thought proper to have recourse to it) is, in effect, giving up the cause.

To be made in *TERROR*, is the common character of all penal laws whatsoever. The *FIRST* intention of them is to *PREVENT* the forbidden actions, by the fear of the penalties enacted on account of the violation of the law. The execution of such laws comes in only in the second place, and is to be considered merely as the remedy, which is to be applied, when the bare declaration of the law is not effectual to procure obedience. But, if the laws themselves are good, it is universally allowed that, when they are broken, the execution of them ought to follow. When laws, therefore, are said to stand in *terror* *ONLY*, or without any view to the infliction of the penalty appointed by them, the very form of the expression implies, that there are some circumstances annexed to them which render the execution of them unfit. To suppose of any laws, that they are not fit to be executed, is giving, at best, but a very unfavourable, dishonourable representation of them; and the farther we enter into the grounds of the supposition, the more unfavourable to the credit of such laws it will appear. For why are they not fit to be executed? If it is because they are calculated to produce more evil than
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good, they are bad laws in point of policy. — But if it is because they are unjust, in respect to their end, or the means by which they direct that end to be pursued, they are bad in point of conscience; and no competent cause can be assigned for retaining them. They cannot, as Dr. Furneaux has justly observed,* “be considered as the offspring of political wisdom, so much as of an arbitrary and tyrannical disposition.” And, as they were enacted upon indefensible principles; so no merely possible conveniencies, which may be imagined to result from them, are weighty enough to shew that it is right to permit them to remain, were the reality of such conveniencies to be admitted. But in fact, the argument drawn from them is as destitute of foundation, as it is void of strength; and, instead of fortifying the credit of such laws, tends rather to weaken it.

Let the notion of laws, kept up merely in *TERROR*, be strictly adhered to, and it will be evident, to say the gentlest things of them, that they must be of little or no use. If any doubt can arise concerning this, it must proceed from hence, that some laws may be inadvertently comprehended under this denomination, only because it is but seldom that occasions happen to require the execution of them; but this is departing from the

* Letters to Sir William Blackstone, 2d ed. p. 122.

the signification of the phrase, as it is applied in the case under consideration. Instances of persons suffering for treason and rebellion are, in general, but rare, and bear no proportion to the number of those, who suffer on other accounts; and yet no one, it is presumed, imagines, for this reason, that the laws against those offences, are laws merely in terrorem. The laws concerned in the present debate, are laws, the execution of which is laid aside, though the objects, against which they are directed, are continually existing. They are laws which are virtually condemned, by a general disapprobation of the execution of them, as improper to be renewed. And, when it is asked, of what advantage it can be to retain such laws as these; which are not only fallen into neglect, but, which the very advocates for their continuance confess ought to be left in this neglected state; the question, thus stated, carries its own answer with it: and a moderate share of attention to the very terms of it will satisfy us, that their continuance can be of no advantage. When the dread of a law ceases, all the efficacy of the law ceases with it. When the execution of the law is entirely thrown aside, especially when it is by common consent exploded; (which in the case here argued it is) the dread of the law soon comes to an end. For it is
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the execution, which supports the terror, gives it all its permanence, vigour and effect; and when that is given up, all the practical authority of the law is given up also: and all their use, upon supposition that it were possible for them ever to be of any service, is destroyed.

But the uselessness of keeping such laws in force is the least objection to it: the consequences of it may be highly pernicious. Bad laws may be suffered to sleep for a season, and, while they remain in this dormant state, may be treated as very harmless, inoffensive things. But the power of oppressing, by their means, abides;—this power, by some combination of unhappy circumstances, may be awakened into action; and, perhaps, among the whole body of obnoxious penal laws, there are none, which are more likely to be most grossly perverted, and be made the instruments of the most insupportable evils, than those, which have been for a time discarded, and afterwards resumed for execution. For what is it, which most commonly brings them into this disgrace, but a conviction that they are yokes too heavy to be endured? What, but a conviction that they are inconsistent with the laws of reason and humanity; that to enforce them is repugnant to the principles of natural and political justice; and would be equally opposite to
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the safety of individuals, and the tranquillity of the publick? The execution of such laws can never be supposed to be revived, but from bad views and dispositions: and from this consideration, alone, it is easy to foresee, of what innumerable mischiefs they may become the occasion. Regard to the laws will be the pretended reason, for the prosecutions commenced upon them; but the advancement of some sinister design will be the real one. Private interest, pique, revenge, and other base and unworthy principles, will be sheltered under the cover of what, in such seasons, would be stiled justice, order, and the support of authority; and a counterfeit zeal for the welfare of the state, become a cloak for every malicious and shameful inclination, by which we can suppose the worst of men to be prompted. Nor are these only arbitrary assertions, which deserve to be treated as unworthy of regard. All, who are acquainted with history, well know, that some of the worst acts of injustice, which are recorded in it, have been committed under the sanction of OBSOLETE LAWS; that is (if it be possible for any of my readers, to want such an explanation) laws grown into disuse, though supinely suffered to continue in force; and which, if they were remembered to be laws at all, were considered

as laws, which were permitted to retain that name in *TERROR* only.

But if we ascend to the primary principles, to which all political regulations ought to be adjusted, we shall be furnished with fresh evidence, that no laws, founded upon injustice, let the execution of them be ever so little intended, or expected, are capable of a solid vindication. Laws ought to guard against oppression, from whatever quarter it is apprehended. — Such laws as these, give power to oppress; incorporate incroachments upon the rights of men into the constitution; and arm those, who are disposed to violate the peace of others, with the force of publick authority. They are so far from being proper means of preserving the publick tranquillity, that they are the most improper ones, which can be chosen for that purpose. For, in their natural operation, they are adapted only to create distress and confusion: and, if it be possible for any particular circumstances to arise, in which some momentary convenience may result from them; there are other methods, by which the evils, (which it is pretended they may be of use to check,) may be remedied with incomparably greater efficacy, safety and honour. If the apprehended evils are, in reality, proper objects of punishment by the civil magistrate, surely the regular, obvious

course to be pursued, is to establish proper laws against them: and not to think of suppressing them by making or supporting laws, which decree penalties against what no human power has a right to punish; which directly forbid what, it is allowed, ought not to be forbidden; and while they, perhaps, make no mention of what is really an offence against the obligations of good subjects, condemn only that, which the judgment of men has no authority to restrain. Laws directed against those actions, which fall properly under their cognizance; in which the nature of the offence is clearly defined, and the sanctions of them duly proportioned to the offences (which they prohibit,) will generally have their influence confined within its proper limits. The terrors of them will be aimed at their original and just object; and there is, comparatively, but little danger of their being abused. But to have recourse to laws, intended to prevent one thing, to restrain another, which is totally distinct from it, and has, perhaps, no probable, and certainly no necessary connexion with it; and to ordain penalties, in cases in which they can never be just, merely because it is possible, that they may, by chance, be employed in cases where punishments may be just; (that is, in other words, to make the innocent directly obnoxious to sufferings, merely for the

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the sake of accidentally reaching the guilty ;) is giving scope to an endless variety of oppressions. For the execution of laws, which are thus made use of, being directed, not by any rule arising from the laws themselves, but by the inclination of those, who call in their force, will always be arbitrary in their application : and the consequence of this is, that they will always be liable to be perverted into some of the worst engines of tyranny ; engines, against which no caution is able to guard, and by which persons, the most unquestionably harmless, and without rebuke, may be given up to be harrassed by every man, who has either an interest to serve, or a passion to gratify, by disturbing them. And is this an expedient, to which it can ever be necessary to the safety, or suitable to the dignity, of a well ordered state, to have recourse ? It appears, on the contrary, to be such a solecism in government, and so inconsistent with all political wisdom, that, without the strongest evidence, it is not to be imputed to any set of legislators whatsoever. And, indeed, to urge it in the case before us seems to be only an after thought, to give some countenance to the continuance of laws, for the making of which it is not pretended, that any good plea can be offered. This was plainly not the original light, in which they were considered by the authors
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of them, who sufficiently shewed themselves in earnest for the execution of them; though the better judgment, and better spirit of the present times, has utterly condemned them.

When laws are allowed to be indefensible, the natural expectation, from such a concession, is, that those, who acknowledge this, should approve of giving them up. That the penal laws, from which the dissenters requested a farther exemption, are of this kind, seems to be confessed; and every argument against keeping up unjust laws, in terrorem, in general, must be acknowledged to conclude against them in particular; and yet, strange as it may seem, a necessity is pleaded for their continuing in force, to keep the dissenters in awe. But let it be allowed to ask, whence this necessity arises? Or against what is it that all these terrors are pointed? It surely cannot be against attempts to hurt the establishment by force. Were there no such laws as those, which we are considering, in being; the laws, by which every man, and every body of men, are protected in the enjoyment of their properties and privileges, would be an ample security against all such encroachments. The continuance of these laws cannot, again, be thought necessary, from a desire to deter the dissenters from writing and speaking in defence of their religious principles and practices. For the dissenters to
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admit this thought, would be to impute to their brethren of the establishment a distrust of their cause, with a suspicion of which, they might be justly displeased; and to charge them with an inclination to substitute force instead of argument, which they would disclaim with indignation. To suppose these laws are retained from an apprehension, that the doctrines of the church could not subsist without them, would be a reflection upon the articles of it, which the friends to them would have reason to resent. Truth wants nothing but an impartial hearing.—The way to promote the interest of it is to permit the judgments of men to determine freely, by the evidence which appears before them, unbiassed by the terrors of this world; and it can never be to the honour of any cause, to think it wants any of these aids to support it, or redound to the praise of its advocates to depend upon them. And yet, against what other contingencies those, who contend for keeping up the terror of these laws, can think it necessary to maintain such a powerful guard, it is not easy to conceive. The apprehensions of indecency and petulance, on the part of the dissenters, need give them no pain;—These are faults which, wherever they are found, furnish the best antidotes against themselves, and never fail to discredit the cause of those, who have so little judgment

judgment and temper as to give way to them. And were these excesses to prevail much more frequently, and in a higher degree, than can be reasonably supposed; yet to desire to have a person lie at the mercy of cruel and unjust laws, and be subject to ruin, merely because in the warmth of a controversy, he has lost his caution, has something in it, which a man of true greatness of mind will abhor; and one, who has a just reverence for his own reputation, will be extremely backward to acknowledge.

Hitherto the propriety of suffering the penal statutes against dissenters, to hold the place in our laws, which is still left to them by the act of Toleration, has been considered as it rests upon the general expedience of keeping them up as laws in terrorem only. But, besides the objections, which have already been urged against them, upon this footing; the antagonists of the dissenters, in this case, have embarrassed themselves with new difficulties; and, by endeavouring to mollify the severity of that side of the question, which they defend, have taken away the force of all the arguments, by which they attempt to vindicate it. To reconcile the dissenters to their disappointment, they have been told, that all their fears are visionary, that they may make themselves perfectly

“solete;” where is the terror it is supposed to contain? Or what is become of that security, which it is supposed to give to church and state? If these laws, on the other hand, are reserved, because occasions may call for their execution; from whence can the dissenting ministers derive that entire satisfaction, in their present circumstances, which is recommended to them? If the execution of these laws is to cease for ever, where would be the harm of a law for quieting the minds of the dissenters, by giving them a proper, real security from those laws, which disturb them? But, if those may yet be the instruments of oppression, and the apprehension of this may justly make the dissenters uneasy; why should they be censured as raising a [needless] ferment^d by their application? Or with what equity can they be blamed, as indulging unreasonable jealousies, when the very reasons assigned for denying their petition, have such an apparent tendency to keep their apprehensions awake? When they think, indeed, of the liberal sentiments and exemplary moderation, which reflect so much honour on the members of the establishment, their fears vanish. But the same excellent spirit, which dwells in these valuable persons, may not descend to others. If it should, yet, as our laws now stand, it is
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^d Letter, p. 22.

not in the power of those, who may have the best inclination to it, to insure the safety of the dissenters from the dangers, to which they are exposed: and, when these things are candidly considered, it cannot be justly thought strange, if they are still desirous to enjoy the advantage of legal safety; and be completely assured of the unmolested exercise of those rights of human nature, which, as a very able writer has happily expressed it, "ought to have every protection and ground of security, which law and the policy of free states can give them."

How far the case of the dissenters is intitled to the benefit of this valuable protection, they must leave to the judgment of the legislature; to which their petition is again, with all deference and humility, submitted. With these dispositions, they hope every step, which they take, will be found to be conducted; and as they are satisfied, that making an application for the removal of what they have esteemed a grievance, will never be condemned by those great assemblies, to which they look up; so they are willing to believe, that, if any of their fellow subjects have been inclinable to censure them for this reason, it will, upon further consideration appear, that they have been

* Dr. Furneaux's preface to the 1st edit. of his letters, &c. p. 17. 2d edit.

been censured without cause; and that they are liable to no imputation of having made any request, which it would be unfit for the most dutiful subjects to present, or inconsistent with the honour of government to grant. To borrow the words of a confessedly competent judge of this matter; “*Sapientissimi etiam*
“*legislatores non omnia viderunt, quæ rei-*
“*publicæ utilia aut noxia esse possunt; &*
“*plerumque progressu temporis accidit, ut*
“*morum, personarum, aut rerum mutatio,*
“*ALIA planè sanciri desideret. Sollemnis*
“*illa jurisconsultorum romanorum formula,*
“*DURUM, SED ITA SCRIPTA LEX EST; illud*
“*inquam, tamdiu valere debet, quamdiu*
“*sine graviore incommodo, quod durum est,*
“*aut tolli, aut emolliiri non potest; SED UBI*
“*PRIMUM DATA EST OCCASIO, eò redeat lex*
“*iniqua, unde malum pedem tulerat; nulla*
“*idonea causa est, quare summæ potestates*
“*auctoritate sua illam tueri porro pergant.*”^f

^f Barbeyrac. *orat. inaugural. de dignitate, et utilitate, juris, ac Histor. p. 17. Droit de la nature, & des Genev. edit. Amsterd. 1712. tom ii. a la fin.*

A P P E N D I X.

IN the course of writing the foregoing Treatise, several points occurred to the Author besides those considered in it, upon which, though they appeared to him not unworthy of attention, he did not then choose to enlarge. Farther thoughts upon the subject having led him to alter his judgment, in this respect, the substance of his reflections, upon these and some other Heads is added in this and the following pages.

NOTE I.

Page 17. line 24. " There is no difficulty
" in discerning, that while I am speaking
" in this manner, &c."

As it has been apprehended, by a judicious friend, that what is said in this paragraph, though it is allowed to be a sufficient answer to the objection proposed in it, will scarcely be seen to be so, by some persons, without farther explication; it may not be amiss to state the whole affair a little more distinctly; that the mistake of the objection, and the force of the reply to it, may be the more easily understood.

The objection, in short, is this; that if the magistrate has no right to lay restraints upon conscience, as such, wherever a plea of conscience intervenes, his authority is at an end: that, as he can be

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no judge of men's hearts, whether this plea be real, or pretended, the effect which it will have upon his jurisdiction, will be the same: and that the greatest crimes, by being sheltered under this excuse, may be committed with impunity. The instances, in which this inconvenience may be supposed to arise from liberty of conscience, may, I presume, be generally reduced to one of these cases. The case of persons, who think themselves bound to use force for the propagation of what they apprehend to be truth.—The case of those, whose principles lead them to judge, what are commonly thought vices hurtful to society, to be innocent, and what may be indulged without scruple.—Or, lastly, the case of those, who are so unhappily misled as to incorporate things hurtful to society into their religion, and account it their duty to practise them. These cases will, in some circumstances, perhaps, run one into another; but it is proper to mention them distinctly: and a few words, it is hoped, will make it appear, that the principles, here established, neither lead to these evils, nor take away the power of the magistrate to restrain them.

As to the first of these cases; that allowing every man a right to think for himself in matters of religion can never authorize persons to offer violence to others, for differing from them in religion, is self evident; for to affirm that it would authorize them in this, is the same absurdity as saying, that to assert a right is giving power to take away that right. That any man should ever attempt to use compulsion in religion upon the principle of every man's having a right to think for himself, is, at least, a moral impossibility, if it is not a natural one. For to allow that every man has a right to judge for himself, in matters of conscience, is allowing, almost in express terms, that conscience is not to be forced; and that a man should ever lay this down as the foundation,
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upon which he attempts to force conscience, is inconceivable. In order to justify himself in such a conduct, he must go upon a directly opposite principle; and maintain that all men have NOT a right to judge for themselves, but that some others have a right to judge for them. If any doubt then can remain upon this head, it must be this; why a person who thinks himself authorized to impose his sentiments on others, should not be suffered to *act* according to HIS judgment, as well as others be suffered to *act* according to THEIRS? But the answer is obvious, and arises almost instantaneously out of the premises here mentioned: viz. because his following his judgment, in this case, is destructive of all the right, which others have to follow their judgments; because the liberty, which he takes, is breaking in upon that liberty, which ought to be preserved in the same extent to all; and because no imaginary right, which he may arrogate to himself of obliging others to be directed by his judgment, can annul the real rights of others to be guided by their own. Every attack, which he makes upon their person, liberty or estate, for this purpose, is an INJURY, which comes within the limits of the civil power; and which the magistrate is not only allowed, but is, by virtue of his office, obliged to restrain: for conniving at these acts of injustice in some, would be a breach of his trust in behalf of others. Indeed to imagine that because men have a right to be protected in acting for themselves in religion, while they offer no injury to their fellow subjects, therefore they must have a right to be protected, when they do offer injuries to them; is as idle as to suppose, that because persons have a right to be safe in passing peaceably and inoffensively along the publick road, they have also a right to be unmolested, when they insult, and plunder all who fall in their way.

The same reasoning, only a little varied in the application of it, will entirely remove this objection also in the second case. Fraud, robbery, perjury, and other crimes of the like nature, are directly repugnant to all the essential and acquired rights of men. Immoralities of other kinds, are acts of injustice to individuals, and subversive of the welfare of the publick. When instances of them occur, therefore, the magistrate has again a right to interpose; and, upon the very same principles, to correct them: nor can this right be controuled by any pleas of conscience, whether real or fictitious, which may be advanced in excuse for them. The nature and consequences of the injury are what properly comes under his inspection; and not the inward sentiment. The violations of the rights of society and the members of it, are the evils, against which he is to guard; and, wherever these are to be found, he has a proper and direct authority to check them by such penalties, as their malignity, and the circumstances attending them, require.

To enter into a particular consideration of the third case, after what has been said, would be tedious. Every intelligent reader will carry on to it, the observations, which have been already made; and the solution of it will be the same. Religion must be the result of conviction; and every man must, therefore, have a right, and is under an obligation, in proportion to his abilities, to judge for himself in the choice of it. But if his judgment should unhappily lead him to make any thing a part of his religion, which is injurious to others, and contrary to the fundamental laws of society; he so far still falls under the animadversion of the magistrate. But then, it must always be remembered, that it is not because the magistrate has an authority to dictate to conscience, that he is thus warranted to interpose; but because the rights of others, whom

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he is equally called to defend, are infringed; and the safety of the civil society, over which he is to watch, is struck at. He acts not as the dictator to his subjects in spirituals, but as the guardian of their temporalities, and the impartial protector of their civil and religious liberties. By attending to this obvious distinction, the rights of conscience and the real rights of government will both be preserved; and the pernicious extremes of calling either in question will be avoided. Religious liberty will be kept from running into licentiousness; civil authority be preserved from degenerating into tyranny; and the conclusion, which has been already drawn from the whole, may be safely admitted; that as no man can derive from his right to follow his own conviction in religion an authority to infringe the rights of others; so, while he keeps clear of this, it "must always remain entire to him; nor, while principles of the most reasonable liberty are allowed to subsist in their due extent, can any attempt be consistently made to take it from him." †

† Page 17, of this Essay.

NOTE II.

P. 19. l. 22. "It is not as offences against God, but as hurtful to the community and breaches of the peace, that he punishes them."

What is observed above is not very different from what has been often said; but there is one thing more to be considered here, which, though it must have occurred to every thinking person, I do not remember to have seen so distinctly mentioned as, perhaps, it ought to have been, viz. that the cases, in which the magistrate has a right thus to interpose, are the very same, in which persons out of civil society

ciety would have a right to defend themselves. Should a man, in the state of nature, be so weak or so wicked as, from a real, or pretended, plea of conscience, to oppress, defraud, or in any respect misuse another, every individual thus injured would be justified in punishing, or (if that word should be thought improper, where no government is supposed to exist) in restraining the transgressor by force. His neighbours might lawfully assist him, or, if they thought it necessary, enter into a confederacy to defend themselves against all such attempts upon their common security. This right, indeed, lodged in the hand of the magistrate, will, in all probability, be much more equitably and effectually exerted, than by single, independent persons: but the end of such an exertion of it is precisely the same, the nature of the occasions upon which he is to exercise this power is not changed, nor is the least right to use force in matters of conscience, as such, acquired by him in consequence of his having such a trust reposed in him. For his right to support his authority in the just execution of his office neither enlarges, or contracts, the bounds of any part of the office itself; the extent of which is always to be determined by the extent of those rights, for the defence of which he was invested with his dignity.

NOTE III.

P. 56. l. 7. "What, but to join in
"placing it on a more enlarged basis, and
"procuring for those who request it, &c."

So much has been already said, in this pamphlet, to establish this title of good subjects to religious liberty, that it is presumed, in what follows, it may be considered as a principle, from which the dissenters may fairly reason, as often as occasions for
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having recourse to it may offer themselves. It may be proper, however, to observe here, that the very act of Toleration, the imperfection of which has been the subject of some of the foregoing pages, carries in it a legal acknowledgment of the right under consideration. A writer of distinguished abilities, in what has been commonly called the Bangorian controversy, asserts indeed, as I find him quoted by Bishop *Headly*, "That the legislature knows no religious rights, but what are contained in the establishment of the church of England." What use was intended to be made of this assertion in that part of the controversy, which gave occasion for them, it is not to our present purpose to enquire: and that, BEFORE the Revolution, the *Legislature* knew of no religious rights, but such as this writer mentions, is very willingly admitted. It was the very grievance, of which the nonconformists, in the reigns preceding that important event, complained; that liberty of conscience, as far as law could deprive them of it, was entirely taken from them. But, at the time when the writer referred to advanced this assertion, it had been long contradicted by the voice of law. The parliament, which passed the act of Toleration, plainly supposed these rights as the foundation, upon which they rested the fitness of that law; and herein all the sincere approvers of it must concur with them. For as the excellent author, from whom I take this account of the assertions of his celebrated antagonist, justly argues: *

"This either was the right of the dissenters, or it was not. If it was not, then the legislature granted them what they had no right to, and acted a piece of injustice to the established church. But if it was their right, — then here is a right, and this a religious right, restored by the means of the Revolution, distinct from all those religious rights,

* *Bp. Headly's common rights of subjects. P. 243.*

“ rights, which are implied in the establishment of
 “ the church of England. The legislature granted
 “ this as a right, and a religious right: and there-
 “ fore, it is a groundless imputation upon it to say,
 “ that the legislature knows no religious rights, but
 “ what are contained in the establishment of the
 “ church, when it is so evident that the legisla-
 “ ture knows the right of Toleration, upon which
 “ the express law for it must be supposed to be
 “ founded, unless you will suppose them to have
 “ done wrong to the establishment by it.”—The
 force of this reasoning, it is presumed, will be al-
 lowed: and it is an obvious remark, that if rights of
 any kind, and religious rights in particular, are
 justly supposed in law as the ground of it, there
 must be a degree, in which they subsist independently
 of law. And if this be granted, it will surely be
 admitted with it, that in whatever degree, reason
 and the sound principles of political societies shew
 them to subsist, it is fit that law should allow them
 to subsist also.

But had it still been fact, that the legislature knows
 no religious rights but what are contained in the
 establishment of the church of England; what would
 it have proved? Nothing but the palpable injustice
 of those laws, which refused to admit such rights.
 During the time, in which this was really the lan-
 guage of the laws, the dissenters justly thought
 themselves kept in a state of heavy bondage
 and oppression; and herein the wiser and better
 part of the nation concurred with them. There
 were, even then, great numbers, who saw (though
 still, it must be owned, but imperfectly) that there
 were religious rights inherent in men, of which no
 human power could justly attempt to deprive them.
 From a sense of this they more than once nobly
 struggled to rescue their brethren from the slavery
 which was entailed upon them; and had at length
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the pleasure to see this deliverance take place. But had the dissenters never obtained such a recognition of their religious rights; would their rights have been less real? Or the effects of those, who laboured to restore the exercise of them, less laudable? "To take our notions of religious rights from human laws, or of what Almighty God has vested mankind with, from the declarations and decisions of his fallible creatures,"* (that I may again borrow the words of that able and consistent defender of civil and religious liberty, whom I have before quoted,) to do this, I say, is following an erroneous rule of judgment. "Supposing, as he proceeds, † the legislature in Spain to know no religious rights, but what are contained in the establishment of the popish church there: will it follow, that oppressed and injured protestants there, have no such rights? Supposing the legislature in Scotland, before the union, knew nothing of any religious rights, but what are contained in the establishment of the KIRK of Scotland; or that the present legislature of Great-Britain, knows nothing of any other religious rights, in that kingdom: does it follow, that therefore, episcopal men, being good subjects, have no religious rights there? I presume NOT." The application is obvious.

* Common rights of subjects. p. 243.

† p. 244.

NOTE IV.

P. 62. l. 11. "Is it a consequence, that because that parliament, went only thus far, succeeding ones must go no further?"

It is easy to see, that, if this way of reasoning were just against an enlargement of legal Toleration, now, it would have been equally just immediately

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after the Revolution, against any act of Toleration at all; since that was more than had been, till that time, granted by law. It would, I think, be very unjustifiable to suppose, that the author, whose reasoning is here considered, entertains any dislike to the Toleration as it now stands. But it may surely be worthy of his consideration, whether his manner of arguing, in this part of his letter, is not, in its just consequences, unfavourable to it. The dissenters have been often condemned for separating from the establishment on account of ceremonies, forms, matters of discipline, and comparatively indifferent things. This seems, at least, to be something of a concession, that if their dissent was founded on points of doctrine, it would be more defensible; and yet now that they desire to be exempted from an obligation to subscribe to the doctrinal articles of the church, they are told, that this is an indulgence never intended for them by the act of Toleration;* that it was what their predecessors never desired,† and from hence it is insinuated, that the liberty which is asked, is too extensive to be allowed. But, notwithstanding the distinction made between these two cases, the right of differing from the national establishment in religious doctrines, and the right of differing from it in rites and ceremonies, stand or fall together. If the civil magistrate has an authority to command his subjects what doctrines they shall make a part of their religion; he has the same right to command what rites, and modes of worship they shall admit into it also. If he has no authority to oblige them to receive those modes of worship, which he espouses, he can have no authority, to oblige them to receive those articles of faith, which he embraces. They have the same liberty, and are under the same obligation to enquire, and adhere to the direction of their consciences, with respect

* Letter to the dissenting ministers, p. 6.

† Ibid. p. 8.

respect to one as well as the other; and their dissenting from his judgment, in either case, can never be justly considered as an offence against his real authority; nor, while they discharge the duties of good subjects, can it be any warrant for shutting them out of his protection.

NOTE V.

P. 63. l. 28. "It is no justification of
 "this oppression, to dignify the principles
 "thus enforced by penalties, with the
 "founding titles of doctrines, which have
 "been acknowledged by the christian church
 "in general, and the supposed fundamen-
 "tals of christianity."

How far this gentleman extends his notion of the unsuitness of a Toleration of dissent, in points of doctrine, from the establishment, it might be running a risk of misapprehending his meaning to affirm. There is something so general, and indeterminate in his expressions, whenever he touches upon this subject, that it is difficult to see, precisely, what his idea is of it. If he thinks, however, that merely departing from established articles, is, in any case, a reason for withholding a Toleration; he will have no reason, surely, to complain of being injured by a supposition, that he is of this opinion, in the case of a departure from, what he calls, fundamentals.* But to make a mere difference from the religion established by the magistrate, even in fundamentals, a reason for the refusal of a Toleration, is still treating Toleration, not as the right of the good citizen, but a privilege of which he may be deprived for no offence against the community

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* Letter, p. 8, 9.

munity, to which he belongs, but merely on account of nonconformity to the ecclesiastical establishment of it: and thus we are insensibly brought back to the mistaken apprehension of a right in the magistrate to oblige his subjects to regulate their religious profession by his own. For, if he has no authority to require their submission to his sentiments in religion in general, he can have none to require it in fundamentals; and, if he has no right to demand it, to say he has a right to inflict punishment for the refusal of it, is an absurdity. And though limiting this power in the magistrate to the case of fundamentals, may seem, in a great measure, to restrain the exercise of it; yet, when the limitation is searched to the bottom, it will appear to amount to very little, if to any thing at all. For, as it is left to the magistrate to determine what are fundamentals, it will always be in his power to adjust and enlarge the list of them, as he judges it necessary. Conformity to the whole system of his religious opinions may be made the conditions, upon which the peace and safety of his subjects are to depend; and want of light, and bigotry, may lead him into all the excesses of persecution, which can arise from the most arbitrary and despotick exercise of power. It is, in reality, little more than a limitation in name; which, in effect, asserts the very thing in more plausible language, which it is not thought expedient to maintain in plainer terms; and will, by degrees, take away all liberty of dissenting from the established church.

But, indeed, the more I reflect on this subject, the more I am inclinable to think, that the gentlemen, who argue in this manner, insensibly confound fundamentals in the church, with essentials, or fundamentals in the state, (if the expression will be allowed,) and imagine that what is to be comprehended under this title in the one, must, of course,

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be so in the other. Did not something of this kind mingle itself with their reasonings, it seems difficult to conceive, that persons of such unquestionable good sense, should adjust the limits of Toleration by a standard so foreign to the real principles of it. And I have the pleasure of finding this conjecture confirmed by a very able writer, by whose favourable mention of this pamphlet, the author of it thinks himself greatly honoured, and some of whose words, upon this occasion, the reader will not be displeased to see. The writer, to whom I refer, is the present Dean of Gloucester, who observes, in his letters to Dr. Kippis,* (which fell into my hands while this note was in writing,) that it was "a pernicious maxim, "universally embraced by every protestant state, at "first, that all the members of the same state "ought, *on that very account*, to become members "of the same church." — "They considered non- "conformity to the external mode of publick worship, and non-conformity to the civil laws of a "country, as one and the same thing; and, therefore, they punished both actions on the same "principle." The gentlemen, who are here concerned, do not profess to carry this matter so far. They are for tolerating a dissent, but not in fundamentals. But why not in these, as well as in non-fundamentals, excepting it be that, what is fundamental in the religious establishment of a nation, is so likewise to the political safety of it; and that whoever departs from the one, becomes an adversary to the other? But, if this be their meaning, it is taking that for granted, which has never yet been proved; nay, which may be easily disproved. Since nothing is easier to conceive than, that persons who differ from the articles of the national church

* Page 61, 62.

church, in several points, thought fundamental by that church, may be, nevertheless, unfeignedly zealous for piety, justice, and all those practical principles in which the welfare of the state can be at all concerned. Nor is there any thing more certain, in fact, than that numbers, who have thus differed from the established system of opinions, have been eminent for their fidelity to the government, love of their country, and all those moral and political virtues, which are the props of civil society. Upon the whole, not acquiescing even in articles, which may be deemed fundamental in religion by the formers of an ecclesiastical establishment, may be consistent with all the duty which can be expected from the best of subjects; and therefore can never be a just reason for cutting persons off from the religious rights of good subjects. Where no civil duty is violated, no penalty, on a civil account, can justly take place. It can be inflicted only on an account strictly ecclesiastical; and, therefore, must be, strictly and properly, persecution.

NOTE VI.

P. 75. After the conclusion of the note, at the bottom of this page, add as follows.

A writer in one of the publick papers,* to whom the author of this piece owns himself much indebted, for his civility, seems to question whether the doubt, to which the foregoing note relates, is a real one; and asks, whether, if it be, the author should not have taken this opportunity to have argued in favour of a more extensive Toleration than the clause in the act, referred to in the passage to which the note is annexed, would allow, provided it should not

* London Chronicle, Dec. 22—24, 1772.

not be affected by the words of the bill presented by the dissenters? In answer to the first of these particulars, the author assures him, that the doubt was a real one. In answer to the second, the writer of the letter is desired to consider, that the business of this treatise, in this part of it, was only to enquire, whether the consequence charged upon the bill in question, would, in fact, have followed from it, if it had passed; and to shew that if the consequence really followed from it, with respect to the act of Toleration, there were other equivalent, and more than equivalent legal securities of the honour of the established doctrine and worship of the church of England, which would not have been affected by the liberty requested by the dissenters; and as this was the author's only view, in this place, this was all which he thought it necessary to say here upon the subject. But endeavouring to shew that an objection is made without foundation in fact, is, by no means admitting that, if it had been otherwise, it would have been of sufficient force to answer the end for which it is produced. It is readily agreed, with the writer, for the removal of whose doubts this paragraph is inserted; that the followers of Athanasius, Arius, Arminius, and Socinus, may, all of them, be equally good subjects; and, as such, equally entitled to the protection of the magistrate in their respective religious persuasions. No judicious friend of truth will object to having any human expositions of the articles of revelation, left open to sober and candid discussion; nor do the gentlemen, who are desirous to have such enquiries restrained by worldly terrors, if any such there be, at all consult the honour and safety of the doctrines, for which they are so tenderly concerned. "If there be a way upon earth," as it has justly been observed, "to render a doctrine suspected, it is to enforce the belief of it by pains
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“and penalties.” If the doctrines of a national religion are founded in truth, they will stand; and neither argument, nor ridicule, (how improper soever the use of it on such subjects may be) will be able to subvert them. If they are not founded in truth, their sincerest defenders will not wish them to stand; nor will it be in the power of penal laws always to support them.—The author speaks not this in the character of an enemy to the doctrines of the articles, with the merits of which his book does not require him to intermeddle. His concern in it is not with the truth and falshood of opinions, but with the principles and just extent of religious liberty; and he thinks it an happiness, that, for the justification of his zeal in favour of so excellent a cause, he need look no farther than the authority of a late very celebrated writer, whose words, in his letter to Horace Walpole, Esq; concerning American Bishops, p. 23, it may not be improper to repeat. “It is not
 “merely from my attachment to the church of England, that I am a favourer of the scheme in
 “question: but from my love of RELIGIOUS LIBERTY; which, in this point, the members of the
 “church of England, in our colonies, do not enjoy.” Whether, from the same principles, the dissenters are not justified in their application, the reader is left to judge.

NOTE VII.

P. 85. l. 6. “He owns, indeed, the
 “MERIT of several among them, with a
 “politeness, which entitles him to their
 “most respectful acknowledgments; &c.”

Great stress is laid by the author of the letter to the dissenting ministers upon the opposition, which
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the dissenters are supposed to have made to the scheme of establishing bishops in America; and he speaks as if it had been considered as almost decisive against them. The impression which this representation of the conduct of the dissenters might make is not here disputed. — The justice of the charge against the dissenters, it is still expected, will be examined by a better pen. But if it is this writer's design to insinuate that the dissenters, and especially their ministers in general, are concerned to hinder their episcopal brethren abroad, from enjoying the advantages of the desired institution, he is much a stranger to their disposition. Dr. Furneaux's letters which were appealed to as a witness in this case against the dissenters, contain a sufficient testimony for them, * that with proper security for the liberty of those of other denominations, they will be so far from opposing, that they will be advocates for such a scheme. But were the fact otherwise; the use made of it by this writer, in the affair under consideration, is, in the judgment of the lately quoted primate of the church, a very unjustifiable one. He says, indeed, † “that he cannot imagine how the dissenters can pretend to be lovers of [religious liberty,] and wish it to be withheld from their fellow subjects.” But admit they should; what is his reflection? “God forbid that we should ever be moved by THIS, OR ANY OTHER PROVOCATION, to wish it withheld in any instance whatever from the dissenters!” ‡

* P. 191. 2d edit.

† Letters to Horace Walpole, p. 23.

‡ Ibid. p. 24.

T H E E N D.

APPENDIX

the influence and support to have made to the
 friends of the Abolition cause in America, and he
 looks on it as having been conducted as almost the only
 equal means. The impression which this report
 upon of the conduct of the Abolitionists makes
 is most gratefully. — The justice of the cause
 against the Abolitionists, it is well established, will be
 sustained by a better power. But it is in the writer's
 duty to indicate that the Abolitionists, and especially
 their ministers in general, are concerned to hinder
 their spiritual brethren abroad, from enjoying the
 advantage of the desired instruction, he is much a
 stranger to their disposition. Dr. Furman's letters
 which were reported to as a witness in this case
 against the Abolitionists, contain a sufficient testimony
 for them, that with proper liberty for the liberty
 of trade of other denominations, they will be in the
 from opposing, that they will be advocates for just
 a cause. But were the fact otherwise; the mis-
 made of it by this writer, in the affair under con-
 sideration, in the judgment of the largely quoted
 estimate of the church, a very respectable one. His
 own words, "that he cannot imagine how the
 Abolitionists can pretend to be lovers of lightness
 "liberty" and wish it to be withheld from their
 " fellow subjects." But what they speak; what
 is his intention? "God forbid that we should ever
 " be moved by this, or any other reason
 " to withhold it with held in any manner
 " whatever from them."



THE END.